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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re SAVANNAH J., a Person Coming
Under the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

STACI J.,

Defendant and Appellant.

E032656

(Super.Ct.No. IJ-11291)

OPINION

APPEAL from the Superior Court of Riverside County. Charles E. Stafford,
Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant.

William C. Katzenstein, County Counsel, and Julie A. Koons, Deputy County
Counsel, for Plaintiff and Respondent.

Sharon S. Rollo, under appointment by the Court of Appeal, for Minor.

1. Introduction

Mother, Staci J., appeals from the orders of the juvenile dependency court denying her Welfare and Institutions Code section 388¹ petition and terminating her parental rights. Mother's older child, Savannah, has been in and out of the dependency system since February 1999 when she was two years old. Mother's younger child, Christian, has been in the dependency system since September 2001 when he was born three months premature and drug exposed. Between 1999 and September 2002, the date when parental rights were terminated, mother has lapsed into drug use numerous times.

We reject mother's claims regarding ineffective assistance of counsel, placement with relatives, and abuse of discretion. The rulings in this case are not the least bit questionable. We affirm the orders of the dependency court.

2. Factual and Procedural Background

Savannah was first taken into protective custody by DPSS at age two in February 1999. At 3:00 a.m., Savannah was found asleep in an apartment strewn with broken glass and open containers of alcohol. Mother was intoxicated and had been running through the apartment complex wearing only a g-string and a bra. Mother had been prescribed various psychotropic medications. Mother admitted she had a recurring substance abuse problem and suffers from depression and mood swings. She immediately began a rehabilitation treatment program.

¹ All further statutory references are to the Welfare and Institutions Code.

At the jurisdictional/dispositional hearing, the court found true the allegations of the original dependency petition, ordered the child's continued foster care placement, and ordered family reunification services for mother. The child was soon returned to mother for an extended visit. The court then placed the child with mother and ordered family maintenance services. The first dependency petition was dismissed in April 2000.

A year and a half later, a second dependency petition was filed in October 2001 when Savannah was four years old. In August 2000, mother had given care of Savannah to her landlord, Linda. She had tried to confirm this arrangement with a notarized letter of authorization. Mother had recently given birth prematurely at 27 weeks to a boy, Christian, and both had tested positive for drugs. Mother had not obtained any prenatal care. Mother confirmed her use of drugs and told the social worker she had been arrested in November 2000. Mother had a criminal history of at least six arrests between April 1998 and May 2001.

In its jurisdictional/dispositional report, based on mother's chronic substance abuse problem, DPSS recommended denying further services to mother and placing Savannah with Linda in foster care. The court upheld the dependency petition filed in October 2001, denied reunification services, and ordered the matter placed in permanency planning for adoption. Savannah was not placed with Linda's family because they were not yet licensed for foster care.

In April 2002, mother filed a section 388 petition seeking reinstatement of reunification services and challenging the placement of the matter into permanency

planning with a plan of adoption. Mother had completed a 90-day residential treatment program in February 2002 and obtained employment. The petition asserted that Savannah had been sexually abused while in foster placement.

The DPSS's April 2002 status review report recommended termination of parental rights. The report acknowledged Savannah had been sexually abused in a former foster placement. Christian had been released from the hospital and placed in a medically fragile foster/adoptive home. He displayed severe ongoing medical problems and developmental disabilities. DPSS recommended denying mother's section 388 petition based on her chronic drug problem and history of relapses.

In May 2002, at the hearing on the section 388 petition, mother's attorney withdrew the section 388 petition without prejudice for 90 days subject to a bonding study being conducted. In addition, the court denied the section 388 petition without prejudice and ordered the hearing on termination of parental rights be continued until September 2002.

In July 2002, DPSS made an ex parte application to obtain HIV testing for Savannah, completion of a psychological evaluation, termination of visitation by mother, and rescission of the order for the bonding study. Savannah was displaying troubled behaviors and mother had a positive drug test. Between May and July 2002, mother had one negative drug test followed by two positive drug tests and two "no shows." The court rescinded the order for a bonding study and conditioned visitation upon mother having a clean drug test.

In September 2002, mother refiled her section 388 petition for modification. Both Savannah's maternal grandfather, Darryl J., and Linda filed applications seeking custody of Savannah and opposing her adoption.

DPSS responded by again recommending mother's section 388 petition be denied because of her chronic drug abuse problem. In its status reports, the DPSS recommended terminating parental rights as to both children and proceeding with the permanent plan of adoption.

The court denied the section 388 petition for failure to show a change of circumstances. It also found reasonable services had been provided to mother, the children are likely to be adopted, and adoption is in their best interests. The court ordered termination of visitation and termination of parental rights.

3. Ineffective Assistance of Counsel for Children

Mother contends the children received ineffective assistance of counsel because they were represented by the same lawyer. Mother makes a muddled argument that the children did not receive proper legal representation because they had different interests concerning reunification and sibling visitation. She asserts that, because mother had a bond with Savannah and not with Christian, dual representation of the children "prevented the trial attorney for both children to advocate whether or not reunification services would serve her clients' different interests [*sic*]." Mother also argues a conflict of interest exists because the children have "divergent interests" in sibling visitation.

Although both parties address whether mother has standing to raise claims about ineffective assistance and sibling visitation, putting that question aside, there are other difficulties with mother's contentions. First, mother cannot now challenge the denial of reunification services. The court's final order, made in October 2001, cannot be attacked in this appeal.² Furthermore, mother's factual predicate--the existence of a bond with Savannah--is not demonstrated by the record. From February 1999 until September 2002, Savannah's relationship with her mother grew increasingly distant. After her detention in February 1999, Savannah's relationship with her mother was interrupted for a number of months. Then, in August 2000, four months after mother regained legal custody, she gave Savannah to her neighbor until DPSS again took custody of the child in October 2001. After that date, mother saw Savannah only once. Mother had a few visits with Christian in the hospital and not again. Mother has no bond with either child.

Mother's next argument that a conflict of interest prevented one attorney from representing both children is also unsupported. We do not perceive the conflict of interest or "divergent interests" present in this case. The case relied upon by mother, *In re Clifton B.*,³ concerned older and younger brothers with a strong fraternal bond. The older boy, who was 12, opposed termination of parental rights and the loss of contact with his little brother. Here no sibling relationship exists between the two children. They

² *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.

³ *In re Clifton B.* (2000) 81 Cal.App.4th 415.

have never lived together and they have had only one visit with one another. Not only was the sibling visitation issue not raised below, and therefore waived, but, had it been raised, it does not apply when no sibling relationship exists.⁴

Mother's characterization of the record is distorted and, consequently, her legal arguments about ineffective assistance of counsel and sibling visitation fail.

Furthermore, there is no showing the children suffered any prejudice from the dual representation or that five-year-old Savannah was prejudiced because the attorney never visited to determine and assess her wishes. Absent prejudice, there cannot be ineffective assistance of counsel.⁵

4. Relative Placement

Mother asserts the juvenile court abused its discretion by not placing Savannah with Darryl D., her maternal grandfather; her maternal grandmother in Utah; a maternal great-aunt in Minnesota; or, in the alternative, with Linda's family.

Mother has no standing to raise this issue.⁶ Even if mother had standing, the record affords little support for her argument. As to the maternal relatives, the facts are as follows. The maternal grandfather lives in Gilroy, California. The social worker first contacted him in late 2001. At that time, he was ambivalent about the responsibility of

⁴ *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.

⁵ *In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711.

⁶ *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035.

caring for Savannah. He had only seen her once or twice in her life. He suggested his sister in Minnesota be considered instead but he could not supply her phone number. The social worker spoke to the Utah grandmother who said she did not want to accept placement of Savannah and suggested she be placed with Linda's family.

In January 2002, grandfather called to say he would accept placement. Mother opposed placement with her father, from whom she is estranged, and requested placement instead with her mother or Linda. The DPSS evaluated the grandfather's home in February 2002 and required the swimming pool be fenced. Grandfather completed the fencing in early May 2002. At that point, mother had filed her section 388 petition for modification, seeking reinstatement of unification services.

On May 21, 2002, the court ordered a bonding study be performed as between Savannah and mother and also ordered mother to have visitation with both children, conditioned upon clean drug tests. For that reason, the DPSS did not then pursue the issue of placement with grandfather.

In July 2002, the court granted the DPSS's ex parte application to limit visitation and rescind the order for the bonding study because mother had tested positive for drug use.

On September 25, 2002, just before the section 366.26 hearing, grandfather filed a declaration seeking placement of Savannah. He stated the DPSS had first contacted him in November 2001 and had refused to consider placement with his sister in Minnesota because of the difficulties with interstate cooperative processing. Grandfather then

decided to ask for placement. Grandfather and his fiancée went to the sheriff's department for fingerprinting. They asked to have Savannah visit them for Christmas 2001 but were told nothing could be done until January 2002. After the home inspection, grandfather arranged for the swimming pool to be fenced and completed in early May. He was then informed that mother's petition for modification would have to be resolved before anything further could happen. He heard nothing more until he was informed about the upcoming section 366.26 hearing in September 2002.

The DPSS responded that grandfather had not "vigorously pursued placement." Grandfather had not contacted the DPSS between May 10, 2002, and August 26, 2002. The report asserts that because Savannah had been in a successful foster placement for nine months with foster parents who want to adopt her, her best interests would be served by the present placement.

Based on the foregoing, the juvenile court did not abuse its discretion in following the DPSS's placement recommendation and not placing Savannah with her maternal grandfather, grandmother, or great-aunt.⁷ The record does not contain any credible support for mother's contention that the DPSS did not consider the maternal great-aunt or maternal grandmother because of the need to comply with the Interstate Compact on Placement of Children (ICPC).⁸ Although grandfather makes that assertion in his

⁷ *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.

⁸ Family Code section 7900 et seq.

declaration, the record also demonstrates the maternal grandmother did not want Savannah and the grandfather never gave DPSS contact information for the maternal great-aunt.

The record further demonstrates that, although the grandfather took some steps toward obtaining custody of Savannah, he never visited her or Christian or attended any of the hearings concerning their welfare. Meanwhile Savannah has lived in uncertainty for more than four years and Christian has been in foster care since the day he was born. We summarily reject mother's contention Savannah should have been placed with Linda, mother's landlord, who is unrelated to her. The dependency court did not abuse its discretion in denying placement of Savannah with her relatives (or non-relatives.)⁹

5. Ineffective Assistance of Counsel for Mother

Mother argues she was denied effective assistance of counsel because her attorney did not file a 39.1B writ after the hearing in May 2002 in which either the section 388 petition was withdrawn or the court denied it without prejudice. Mother erroneously asserts that, had a writ petition been filed, she would have been able to argue the court should have granted reunification services in October 2001 and that there was no dependency jurisdiction over Savannah. Mother is wrong because the orders made in October 2001 became final. A dependency order must be appealed within 60 days.¹⁰ If

⁹ *In re Robert L.* (1993) 21 Cal.App.4th 1057.

¹⁰ Section 395; California Rules of Court, rule 39(b); *In re Meranda P.*, *supra*, 56 Cal.App.4th at page 1150.

the court does not set a section 366.26 hearing when denying reunification services, the order must be appealed immediately.¹¹ Mother could not challenge these orders six months later.

6. Section 388 Petition

Mother lastly argues the court abused its discretion when it denied the section 388 petition that she refiled in September 2002. In the petition, she sought reunification services and visitation. But, at the hearing, mother's counsel withdrew the request for reunification and instead asked that Savannah be placed with Linda. Mother's request for visitation was superfluous because she was already entitled to visitation conditioned upon a clean drug test.

In any event, mother did not demonstrate any changed circumstances.¹² The record shows mother's drug involvement, that began when she was a teenager, continued between 1999 and 2002. Even after her completion of a drug program in February 2002, she relapsed into substance abuse in the summer of 2002. Mother cannot claim any long period of sobriety or "real reform"¹³ that would justify granting her section 388 petition. For the same reason, it could not be in the children's best interest to grant the petition.

7. Disposition

We affirm the orders of the juvenile dependency court.

¹¹ *Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1395.

¹² Section 388; *In re Stephanie M.*, *supra*, 7 Cal.4th at page 317.

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s/Gaut
J.

We concur:

s/Ramirez
P. J.

s/King
J.

[footnote continued from previous page]

¹³ *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, footnote 9.